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SIPDIS

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DEPT PLS PASS TO USTR JCHOE-GROVES, DOC-JBOGER,
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SUBJECT: 2006 SPECIAL 301 REVIEW: SERBIA AND MONTENEGRO

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SUMMARY

1. (SBU) While generally agreeing with the description of IPR problems contained in the IIPA Special 301 submission, we do not recommend that Serbia and Montenegro be placed on the Watch List. The IPR environment in Serbia and Montenegro (SAM), although not yet satisfactory, is certainly moving in the right direction. As noted in Reftel B, significant progress was made on the IPR Action Plan agreed upon by the State Union and republic-level governments in April 2005. We continue to see encouraging actions on the part of both republics, as well as indications that further progress is within reach. Recent meetings with officials in both republics indicate that there is a readiness to discuss another action plan to finish the legislative framework, bolster enforcement efforts and cooperate with the private sector in an anti-piracy campaign. Placing Serbia and Montenegro on the Watch List after all of the progress made on the IPR Action Plan (Reftel B) would risk undercutting the political will for more progress. The Ambassador will be holding senior-level consultations with government leaders in coming days to test for receptiveness for real progress on IPR issues. END SUMMARY.

2. (SBU) The IPR environment in Serbia and Montenegro (SAM) is not yet where it needs to be to protect U.S. interests. We generally agree with the description of IPR problems contained in the International Intellectual Property Alliance (IIPA) submission for the 2006 Special 301 review, although some issues may be somewhat overstated.

3. (SBU) However, the momentum is in the right direction. We see encouraging will and actions on the part of several ministers and agencies responsible for different aspects of IPR protection toward making necessary improvements. These ministers have a fairly good track record of delivering on commitments. Reftel B is a thorough assessment of the SAM's progress on last year's action plan and illustrates that both the State Union and republic-level governments have shown commitment to strengthening the IPR environment. By our assessment, of the eight target areas identified in the action plan, we have seen substantial progress in five areas.

ITEMS REMAINING ON LAST YEAR'S ACTION PLAN

4. (U) Concerning the creation of an effective mechanism for cross-checking applications to drug agencies for approval of generic drugs with pharmaceutical patents already registered (typically, by the research-oriented companies), no action was taken by the State Union. However, this issue was raised in recent EU Stabilization and Association Agreement (SAA) talks with SAM, and it was determined that this was not feasible due to the complexity of the patents. The EU does not have such a cross-checking mechanism, and the U.S. Food and Drug Administration (FDA) cross-checks for trademarks but not patents.

5. (SBU) The draft Law on Special Rights for the Efficient Protection of Intellectual Property was not enacted in Serbia in 2005. However, it has been adopted by the government and will be on the Parliament's agenda when it reconvenes in March or April. This will be an important enforcement tool, since it will make legal entities (companies) culpable for IPR violations and provides for fines up to CSD 3 million (approximately USD 41,000). Minister of International Economic Relations Milan Parivodic told econoffs on February 13 that he would offer his assistance in making sure the law was placed in a fast-track procedure on Parliament's agenda.

6. (U) Optical disc laws for Serbia and for Montenegro were drafted but not passed in 2005. In Montenegro, the draft Law on Optical Disks was delivered by the Ministry for Foreign Economic Relations to the Ministry of Culture in late 2005. The bill is expected to be adopted by the Government soon, possibly by the end of February and no later than the end of March 2006, and subsequently enacted by Parliament. The law

will regulate the production of optical disks, require the registration of the business activity of reproducing optical disks for commercial purposes, and provide for surveillance of optical disk imports and exports as well as imports and exports of polycarbonates and production equipment for the production of optical disks.

17. (SBU) In Serbia, Minister Parivodic agreed on February 17 for his Ministry to be responsible for government adoption and passage of the Law on Optical Disks. Special 301 considerations and WTO accession talks have prompted the Ministry of International Economic Relations to be actively engaged in strengthening the IPR environment in Serbia.

18. (U) Amendments to the Montenegrin Penal Code were provided by the Ministry for Foreign Economic Relations to the Ministry of Justice in late 2005. The amendments provide for ex officio prosecution of IPR infringements, specify all acts that constitute an IPR-related offence, and increase the penalties for conviction of IPR infringements. The bill is expected to be adopted by the Government by the end of March 2006, and subsequently enacted by Parliament.

IMMEDIATE RESULTS IN MONTENEGRO WITH NEW ENFORCEMENT LAW

19. (U) On January 1, 2006, the Government of Montenegro (GoM) began active enforcement of its law regulating protection of intellectual property rights, starting with a public notice that such actions would commence. In the first month, inspectors surveyed 82 retail and wholesale locations. Forty closed, apparently to avoid inspection. In other cases, merchants who had previously carried pirated goods had disposed of such stock prior to inspection. In 29 locations, inspectors reported trade in goods with no origin ("pirated"), and consequently seized over 6,700 DVD, CDs, tapes, and records. Inspectors have requested prosecution of 13 cases and assessed mandatory fines in seven other cases.

10. (SBU) A local legitimate film distributor in Belgrade told econoff on Feb 10 that Montenegro's enforcement efforts are showing immediate dividends. Between November 1 and December 15, 2005, Millennium Film and Video sold 148 DVDs (approx. EUR 2,092) to two clubs in Podgorica. Sales increased five times between December 16 and February 10, 2006, to 749 DVDs (approx. EUR 10,506) to nine clubs in Podgorica. He attributes this success to the effective enforcement and PR activities of the Montenegrin government.

11. (U) On February 1, 2006, Montenegrin Prime Minister Milo Djukanovic together with Bill Gates signed a three-year contract, providing software licenses to Montenegrin educational and scientific institutions. In September 2005, the GoM and Microsoft concluded a USD 2.36 million contract, creating a strategic partnership between the GoM and Microsoft for legalization of all the Microsoft software being used by state institutions. By mid-March, Microsoft and local governments in Montenegro will have completed the licensing of software used by the municipalities.

12. (U) In January 2006, Microsoft's local business partner introduced a public campaign of flyers and billboards, "Stop Piracy," advising that licensing current software is "as easy as 1, 2, 3: Count PCs, Order License, Done."

13. (U) In addition to the steps under the agreed Action Plan, Montenegro's first society of composers and artists was registered on January 9, 2006. Registration will allow for the collection and distribution of royalties for use of protected works.

14. (U) Compared to Montenegro's status a year ago (Reftel E), it has made significant although not complete progress towards our agreed goals in protecting intellectual property. Government action has proceeded at an acceptable pace. Final passage of the Law on Optical Discs and amendments to the Penal Code by Parliament may be delayed, as political attention is consumed by the central question of possible independence of Montenegro from Serbia, which will likely be decided by referendum in the second quarter of 2006.

ENFORCEMENT IMPROVED BUT PR WAS LACKING

15. (U) As mentioned in the IIPA submission, enforcement improved in Serbia in 2005. Through numerous discussions with the Business Software Alliance, they expressed satisfaction with police efforts to raid facilities and arrest street vendors. The number of guilty verdicts rendered, though small, was a significant improvement from 2004.

16. (U) However, subsequent press releases, touting the success of these enforcement activities, were not forthcoming. The private sector was frustrated with the unwillingness of ministries to permit the use of the results in an effective anti-piracy campaign.

17. (U) The Embassy participates in the AmCham IPR Working Group that consists of representatives from the various stakeholder industries. One of the main recommendations of the group is for the government to appoint an agency and spokesperson to cooperate with the private sector in its anti-piracy campaign. Such a partnership between the government of Serbia and the private sector would deliver a clear message to the public that piracy will not be tolerated in Serbia.

ADDITIONAL IPR AREAS OF IMPROVEMENT NOT IN IIPA REPORT

19. (U) Discussions with representatives from the pharmaceutical industry indicate that there have been improvements in the area of data exclusivity. On November 1, 2005, a new Regulation on the Licensing of Medicinal Products went into force which provides for the protection of clinical data in the licensing application process. Therefore, generic companies cannot use clinical data from research-oriented pharmaceutical companies for up to six years for original products and up to 10 years for high tech products. This regulation was welcomed by the industry, and we were told that a generic license application was already denied due to usage of protected clinical data.

20. (SBU) As a part of the WTO accession talks, Serbia has agreed to begin drafting a law for the protection of undisclosed trade secrets. According to Article 39 of TRIPS, members must ensure effective protection against unfair competition by establishing a regime which protects undisclosed trade secrets from unfair commercial use.

TRAINING

21. (U) Serbia could benefit from further training in the inspectorates (market and tourist) under the auspices of the Ministry of Trade. A precondition for this training would be the passage of the Enforcement Law, which will provide powers for them. Both the Serbian Customs Administration and the Montenegrin Customs Administration with its line inspectors could benefit from additional training in how to detect and intercept export and especially import of counterfeit goods.

EXPECTED NEXT STEPS

22. (U) Based on input from the AmCham IPR working group, we have drafted a proposed action plan for 2006. We see five key action items that would further improve IPR protection and address U.S. industry concerns:

- Ensure "fast-track" approval of new IPR Enforcement Law in Serbia that will provide powers for market inspection, tax inspectors and police to act whenever pirated or counterfeit goods are found and make companies liable for criminal penalties.

- Tax inspectors and police should have powers to act ex officio in search for non-licensed software and other IPR infringements during their regular controls, whether through effective enforcement of the current Law on Tax Administration or through an amendment to the IPR Enforcement Law.

- In both Serbia and Montenegro prepare, approve and fast-track in the parliamentary procedure the Law on Optical Discs, in order to regulate commercial production and duplication of optical discs, which is the medium commonly used to infringe IPR.

- Appoint a government agency and spokesperson with the task of cooperating with the private sector to effectively promote the enforcement activities of the government by releasing statistics of raids conducted, optical discs seized, etc.

- Passage of the amendments to the Penal Code in Montenegro that will provide full criminal protection of IPRs.

23. (SBU) Some government officials have been receptive to these action items in recent meetings, and we will urge the GOS and GOM to move forward. Our approach is to secure an agreed, time-bound, action plan for addressing these issues as a work program for 2006. The Ambassador will be conducting meetings with senior officials in Belgrade in the coming days to test their receptiveness to implementing these measures. We will continue to provide targeted assistance to help the governments fulfill this action plan and to build institutional capacity to combat and prosecute piracy.

Recommendation

24. (SBU) The Special 301 process is a useful tool to advance our interests with respect to IPR protection. The IPR environment in SAM is not currently satisfactory, but it is steadily improving. The key question here is whether putting SAM on the Watch List would prompt stronger government action

and bring us closer to our goals. However, the history of our bilateral relations since the Milosevic period suggests that putting SAM on the Watch List will be viewed as a "sanction," no matter how we characterize it. Such a step would also come during a time of political uncertainty regarding the Montenegrin referendum for independence as well as negotiations on the final status of Kosovo (and, possibly, suspension of assistance for lack of ICTY cooperation).

125. (SBU) Both the State Union and republic-level governments of Serbia and Montenegro took seriously our warning in 2005 that it risked placement on the Special 301 Watch List, and the result has been effective actions to remedy shortfalls in IPR protection. However, we fear that placing SaM on the watch list now, when the two governments are focused on staying off the list to provide a contrast to other neighboring countries, like Bulgaria and Croatia, would backfire. We are hoping for further progress on the basis of our recent proposal a new action plan. To avoid any slowing of the momentum that has been generated, we recommend against placing the Serbia and Montenegro on the Watch List.

MOORE